IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4561 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE

&

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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MEGHABHAI KANABHAI KOLI - Appellant(s)

Versus

UNION OF INDIA & 1 - Defendant(s)

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Appearance :
MR NL RAMNANI for Appellant
MR UM SHASTRI for Defendant(s) : 1,
MR VM PANCHOLI AGP for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MS. JUSTICE R.M.DOSHIT
Date : 21/11/2005

ORAL JUDGEMENT **(Per : HONOURABLE MR. JUSTICE ANIL R. DAVE)**

This Appeal has been preferred under the provisions of Section 23 of the Railway Claim Tribunal Act, 1989 by the applicant in Claim

Application No. OA9900003 against the judgment and order dated 17th May, 1999 passed by the Railway Claims Tribunal, Ahmedabad. By virtue of the *impugned* judgment, the Application of the appellant herein for compensation in respect of the death of his wife Mandiben has been dismissed.

The facts giving rise to the claim are as under :-

It is the case of the Appellant that on 5th December, 1988 he and his wife Mandiben had boarded the Train No. 177 at Bhuj at 7.00 a.m. The appellant and his wife were travelling to Kandla Port. The train left Bhuj Railway Station at 7.10 a.m.. After travelling for some time, due to a jerk, the appellant's wife Mandiben, who was standing near the door in the middle bogie, fell off the train and suffered severe injuries. The appellant took his wife to a hospital where she died of the injuries suffered by her. The appellant, therefore, lodged Claim Application No. OA9900003 in the Railway Claim Tribunal, Ahmedabad for compensation. In support of the claim, the appellant examined himself [Exh. 10] and another passenger, Shri Govindbhai Parmar [Exh.

17], who was travelling on the same train and produced railway tickets [Exh. 11 & 12] from Bhuj to Kandla Port.

The claim was contested by the Railway authorities. It was denied that the appellant and his wife were travelling on the train in question or that the deceased had fallen off the train. It was their case that the said train left Bhuj Railway Station at 7.10 a.m. and after travelling for about one kilometer, the deceased lady was struck by the cattle guard of the engine while she was trying to cross the railway track. The deceased suffered severe injury on her head. The appellant who was residing in the slums in the vicinity of the railway track, immediately came from the slums and took the lady for medical treatment. In support of the said plea, the Engine Driver [Exh. 21], the Assistant Driver [Exh. 22] and the Guard of the Train [Exh. 23] were examined. The post mortem report of the deceased had also been produced on the record.

Upon appreciation of the evidence, the Tribunal did not believe the case of the appellant

and held that the wife of the appellant died of severe injuries, which she suffered as she had dashed with the cattle guard of the engine while she was trying to cross the railway track. The appellant husband was not awarded compensation and, therefore, the present Appeal.

Learned advocate Mr. Ramnani has submitted that the judgment delivered by the Tribunal is improper and illegal because the Tribunal has not appreciated the evidence in proper manner. According to him, when the railway tickets had been produced in evidence before the Tribunal, the Tribunal ought to have believed that the deceased Mandiben was travelling in the said train alongwith the appellant. He has relied upon evidence of the aforesaid witness-Shri Govindbhai Parmar [*Exh. 17*], who had deposed before the Tribunal that because of the jerk, a woman passenger had fallen down from the bogie in which he was travelling.

We have heard the learned advocates and also perused the record pertaining to the case which has been called from the Tribunal. Upon perusal of the

record and upon hearing the learned advocates, we are of the view that the Tribunal has come to a correct conclusion by appreciating evidence in proper manner.

Upon perusal of the evidence, we find that the Driver, Assistant Driver and the Guard of the said train had deposed that the deceased woman had met with the accident while she was trying to cross the railway track. They had adduced necessary contemporary evidence to show that necessary notes were made in the record which is normally maintained by the railway authorities. It is also pertinent to note that the deceased woman did not expire immediately after the accident had taken place. She was taken to a hospital and perhaps she expired in the hospital. Inspite of the said fact, no medical officer has been examined by the appellant. The details of injuries suffered and the treatment given to the deceased woman have not been established with the help of any evidence. Even the Doctor who had performed post mortem has not been examined. It has been stated by the Guard that the appellant was not present when the woman was lying near the railway

track. According to him, the appellant, husband of the deceased had come after sometime; possibly from the slums where he was residing and with the permission of the Guard, he had taken his injured wife to a hospital, and he had also signed the writings executed by the Guard that the appellant wanted to give medical treatment to his injured wife. Thus, there is sufficient contemporary record to show that the deceased woman had not fallen down from the bogie of the train as alleged. It is also pertinent to note that the tickets which were produced in evidence by the appellant had been produced at a belated stage and no reference to the said tickets like number of the tickets, etc. had been stated in the Claim Application filed by the appellant before the Tribunal.

In view of the aforesaid evidence, we are of the view that the Tribunal has come to a right conclusion. We, therefore, do not find any substance in the Appeal. The Appeal is, therefore, dismissed with no order as to cost.

{Anil R. Dave, J.}

{Miss R.M Doshit, J.}

*Prakash**